NOT DESIGNATED FOR PUBLICATION
JUDGE OLLY NEAL
MAY 10, 2006

DIVISION I

CA05-1067

MAY 10, 2006

KENT SMITH
APPELLANT

V.

LINDELL TRIMBLE TOYOTA, INC. and TOYOTA MOTOR SALES USA, INC.
APPELLEES

AN APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [CV-2004-1006-II]

HONORABLE VICKI S. COOK, JUDGE

AFFIRMED IN PART; DISMISSED IN PART

Appellant Dr. Kent Smith appeals pro se from the trial court's dismissal with prejudice of his action against appellee, Lindell Trimble Toyota, Inc (Lindell). For reversal, appellant questions whether (1) "the purchase agreement entered into is illegal because it fails to comply with Arkansas taxation law," (2) "the tying of components of a product to the product is illegal in the State of Arkansas," and (3) "an automobile manufacturer must upgrade all parts of an upgrade or only certain parts." We affirm in part and dismiss in part.

On July 10, 2000, Dr. Smith and his friend, Kim Freeman, purchased a 2000 Toyota Tacoma from Lindell. Subsequently, appellant Smith filed a small claims complaint against the appellees in Hot Springs District Court, claiming that "[Lindell] kept rebate after sale and price set," that he was "unable to get clips for fender skirt without buying fender skirt," and that he "paid for upgrade on wheels but [Lindell] did not upgrade the wheel for spare tire.

Paid for upgrade on tires and all 5 tires were upgraded."[1] Both appellees responded, and appellee Toyota Motor Sales, U.S.A., Inc. (Toyota) filed a motion for summary judgment, which the district court granted. Following the dismissal of his action against Lindell, appellant sought appeal in the Garland County Circuit Court.

On May 18, 2005, the circuit court granted Toyota's motion for summary judgment. During the circuit court proceedings that followed on June 14, 2005, it was determined that Dr. Smith and Kim Freeman had purchased the truck for $20,000 cash. Toyota's Suggested Retail Price for the vehicle was $22,506. The Retail Buyers Order for the truck indicated that there were no rebates or incentives, although there was apparently a $500 rebate. However, the Retail Buyers Order also contained a box checked "yes," indicating that any rebates offered would go directly to Lindell as the dealer. Additionally, the Consumer Cash Back Request Form indicated in part that, "I, the customer, have applied the consumer cash toward my deal, and therefore, I assign the consumer cash payment directly to the dealer." Dr. Smith agreed to both of these terms, which were memorialized by the signature of his co-buyer Kim Freeman.

Following Dr. Smith's testimony, Lindell moved to dismiss. The trial court granted the motion, and entered an order on June 20, 2005. This appeal followed.

When reviewing a circuit court's order granting a motion to dismiss, we treat the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff.

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[1]Kim Freeman did not join appellant in this suit.

Hackelton v. Malloy, ___ Ark. ___, ___ S.W.3d ___ (Jan. 5, 2006). In testing the sufficiency of a complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings are to be liberally construed. *Fleming v. Cox Law Firm*, ___ Ark. ___, ___ S.W.3d ___ (June 23, 2005).

Dr. Smith asserts first that the purchase agreement he entered into with Lindell is illegal because it fails to comply with Arkansas taxation law. It is his contention that, because he did not receive the credit for the $500 consumer cash rebate toward the purchase price of the vehicle, collection of the rebate should have been included in the purchase price for sales tax collection purposes.

To the extent that Dr. Smith argues that he received no credit for the rebate toward the purchase price of the vehicle, he has waived that argument. A review of both the Retail Buyers Order and the Consumer Cash Back Request Form clearly indicates that Dr. Smith, through his co-buyer, assigned the consumer cash payment directly to Lindell. Further, as it relates to Dr. Smith's taxation argument—the failure of Lindell to include the rebate in the purchase price of the vehicle deprived the State of Arkansas from legitimate tax revenue it should have received—he lacks standing. Rule 17(a) of the Arkansas Rules of Civil Procedure reads, in pertinent part, that "[e]very action shall be prosecuted in the name of the real party in interest." In this instance, the real party in interest would be the State of Arkansas because Arkansas Code Annotated § 26-52-105 (Repl. 1997) vests with the Department of Finance and Administration Director the right to promulgate rules and

regulations related to the disposition of taxes, interests, and penalties related to the collection of taxes levied.

Dr. Smith's second point on appeal deals with the "bundling" of parts manufactured and packaged by Toyota and sold by Lindell. As previously stated, the trial court granted Toyota's summary judgment motion early in these proceedings, and Dr. Smith did not appeal from that decision. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure-Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. *Weire v. CNA Fin. Corp.*, ___ Ark. ___, ___ S.W.3d ___ (Sept. 21, 2005). In order for a judgment to be final, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *U.S. Bank v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003). Here, this was the only issue to be litigated between Dr. Smith and Toyota. Following the court's grant of summary judgment to Toyota, this point was no longer an issue before the circuit court. In fact, there was no presentation of evidence at trial regarding this issue. Accordingly, based on the authorities noted herein, we are obligated to dismiss this appeal in part for lack of jurisdiction.

Dr. Smith's final argument relates to Lindell's failure to upgrade the wheel on the spare tire. We need not address this point on appeal because Dr. Smith has failed to make any convincing argument or cite to any convincing authority in support of his claims. This court has stated on numerous occasions that we do not consider assertions of error that are unsupported by convincing legal authority or argument, unless it is apparent without further

research that the argument is well taken. *See Rainey v. Hartness*, 339 Ark. 293, 5 S.W.3d 410 (1999).

Affirmed in part; dismissed in part.

GLADWIN and GRIFFEN, JJ., agree.